

1 REMY MOOSE MANLEY, LLP  
2 HOWARD F. WILKINS III, SBN 203083  
3 CHRISTOPHER L. STILES, SBN 280816  
4 CHRISTINA L. BERGLUND, SBN 303865  
5 555 Capitol Mall, Suite 800  
6 Sacramento, CA 95814  
7 Telephone: (916) 443-2745  
8 Facsimile: (916) 443-9017  
9 Email: cwilkins@rmmenvirolaw.com  
10 cstiles@rmmenvirolaw.com  
11 cberglund@rmmenvirolaw.com

12 Attorneys for Petitioner and Plaintiff  
13 MARINA COAST WATER DISTRICT

EXEMPT FROM FILING FEES  
[GOVERNMENT CODE § 6103]

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 IN AND FOR THE COUNTY OF MONTEREY

16 MARINA COAST WATER DISTRICT, AND  
17 DOES 1-100,

18 Petitioner and Plaintiff,

19 v.

20 COUNTY OF MONTEREY, MONTEREY  
21 COUNTY BOARD OF SUPERVISORS, AND  
22 DOES 101-110,

23 Respondents and Defendants,

24 CALIFORNIA AMERICAN WATER, AND  
25 DOES 111-120.

26 Real Parties in Interest.

Case No.: 19CV003305

**DECLARATION OF MICHAEL D. DELAPA  
IN SUPPORT OF MARINA COAST WATER  
DISTRICT'S REPLIES TO OPPOSITIONS  
TO REQUEST FOR STAY/PRELIMINARY  
INJUNCTION**

[California Environmental Quality Act, Public  
Resources Code, § 21000 et seq.; California Code  
of Civil Procedure, § 1094.5]

COMPLEX and ASSIGNED FOR ALL  
PURPOSES to:

Hon. Lydia M. Villarreal  
Dept.: 13

Date Filed: August 15, 2019

Date and Time of Stay/Preliminary Injunction  
Hearing: October 4, 2019

1 I, Michael D. DeLapa, declare as follows:

2 1. I am the Executive Director and a founder of LandWatch Monterey County  
3 (“LandWatch”), and I offer this declaration in support of Petitioner Marina Coast Water District’s  
4 Motion for Stay/Preliminary Injunction. The matters set forth herein are stated upon my personal  
5 knowledge and if called upon to testify, I could and would testify competently as to them.

6 2. I hold a Bachelor of Science degree in biology from Stanford University; a Master of  
7 Science degree from Stanford University in biology; a Master of Business Administration from the  
8 Stanford Graduate School of Business; and a Public Management Certificate from the Stanford Graduate  
9 School of Business.

10 3. Prior to assuming the position with LandWatch, I worked as an independent consultant  
11 through DeLapa Consulting and specialized in new ventures and interim executive roles. My  
12 assignments included interim executive director of the California Ocean Science Trust; (consulting) vice  
13 president of marketing and strategy for FotoNotes, a mobile cloud platform for real estate operations;  
14 interim (consulting) chief operating officer of New Leaf Paper, the leading distributor of recycled paper;  
15 interim (consulting) vice president of marketing for the Cleantech Group, a cleantech research firm; and  
16 business strategist, executive coach, and facilitator to Mal Warwick Associates/Donordigital, an online  
17 direct marketing and fundraising firm. Previously, I helped launch and manage a number of business and  
18 nonprofit ventures, including the California Fisheries Fund, a \$5M revolving loan fund to support  
19 sustainable fisheries; the Monterey Bay National Marine Sanctuary Foundation, a "community  
20 foundation" for the Monterey Bay National Marine Sanctuary; LandWatch Monterey County, a land use  
21 advocacy organization; and Sea Studios Foundation, a nonprofit natural history television production  
22 organization. My attached resume sets out further details of my career, including my participation on  
23 the boards of a number of environmental and land use organizations. See **Exhibit A**.

24 4. LandWatch is a California non-profit public benefit corporation exempt from federal  
25 income taxation under section 501(c)(3) of the U.S. Internal Revenue Code, with its principal place of  
26 business in Salinas, California. LandWatch’s organizational purpose is to promote sound land use  
27 planning and legislation at the city, county, and regional levels, to combat urban sprawl, and to promote  
28

1 livability in the region's cities and towns, through public policy development, advocacy, and education.  
2 LandWatch is dedicated to preserving economic vitality, high agricultural productivity, and  
3 environmental health in Monterey County by encouraging effective public participation in the land use  
4 planning process. LandWatch actively participates in local and regional land-use planning efforts in  
5 Monterey County and its incorporated cities through the public participation provisions of the California  
6 Environmental Quality Act ("CEQA"), the State Planning and Zoning law, and the Fort Ord Reuse  
7 Authority ("FORA") Act.

8         5. LandWatch has been concerned to focus future development in the existing Monterey  
9 County cities in order to encourage walkable, vibrant local communities and to prevent auto-dependent  
10 sprawl development that consumes available habitat, open space, and agricultural land. In order to  
11 reduce groundwater demand in the long overdrafted Salinas Valley Groundwater Basin, to conserve  
12 Salinas Valley farmland for agricultural activity, and to reduce vehicle miles travelled and greenhouse  
13 gas emission, LandWatch has been particularly concerned to encourage the development of balanced  
14 urban, infill housing on the Monterey Peninsula.

15         6. With the objective of ensuring an adequate water supply for Monterey Peninsula housing  
16 while protecting the Carmel River, LandWatch has been an active participant in efforts to develop a  
17 water supply for the Monterey Peninsula that would meet the requirements of the 1995 State Water  
18 Resources Control Board ("SWRCB") Order No. WR 95-10 and the 2009 SWRCB Cease and Desist  
19 Order No. WR 2009-0060 ("CDO"), both of which require Cal-Am to reduce Carmel River diversions.

20         7. LandWatch's participation began in 2005 when LandWatch provided comment letters  
21 related to the environmental review and implementation of the then-proposed Coastal Water Project.  
22 Beginning in June 2009, LandWatch worked with other community-based, non-profit, non-  
23 governmental organizations to develop an alternative to the Coastal Water Project called the Hybrid  
24 Regional Plan, representing a specific set of the best projects evaluated in the Coastal Water Project EIR  
25 and some projects already in place that would expeditiously yield the water supply required to meet the  
26 demands of SWRCB Order No. 95-10.

27         8. LandWatch's then Executive Director Amy White and LandWatch Board member Janet  
28

1 Brennan met with Cal-Am’s president in March 2012 to discuss a new overall approach, discussing and  
2 presenting data related to water supply and demand. When Cal-Am proposed the MPWSP in April  
3 2012, LandWatch sought and was granted party status by the California Public Utilities Commission  
4 (“CPUC”). LandWatch purposes in participating in the CPUC review of the MPWSP were to increase  
5 the use of the lowest-cost water supply options; to size a desalination facility only after quantifying  
6 water available from other sources such as Groundwater Replenishment from recycled water (later, the  
7 Pure Water Monterey project); to ensure timely project implementation; and to ensure adequate  
8 environmental review, including consideration of feasible alternatives that would less or avoid  
9 significant environmental impacts.

10 9. In determining whether a stay of the approval of the combined development permit  
11 issued by the County of Monterey for the desalination plant would be against the public interest or  
12 whether the balance of hardships favors injunctive relief, the Court may consider whether the stay would  
13 deprive Cal-Am customers of necessary water supply or would adversely affect the Carmel River by  
14 requiring pumping in excess of the levels permitted by the CDO. As explained below, delaying the  
15 commencement of construction of the desalination facility would not deprive existing and future  
16 customers of necessary water or require pumping in excess of the levels permitted by the CDO.

17 10. In a September 2019 report, “Supply and Demand for Water on the Monterey Peninsula”  
18 (“MPWMD 2019 Supply and Demand Report” or “Report”), the General Manager of the Monterey  
19 Peninsula Water Management District, identified the available water supplies for the Cal-Am service  
20 area in Table 1.

21 11. Pending completion of either the desalination facility or the planned Pure Water  
22 Monterey Expansion, the available water supply would be 9,450 Acre-feet per year (“AFY”).  
23 (MPWMD 2019 Supply and Demand Report, p. 1.) That 9,450 AFY water supply includes the  
24 following sources:

- 25 • 3,500 AFY from the existing Pure Water Monterey recycled water project, which is 90%  
26 complete and expected to begin deliveries to Cal-Am in early 2020;  
27

- 1 • 3,376 AFY from the Carmel River, which is the hard cap for Carmel River diversions
- 2 after 2021 under the existing CDO;
- 3
- 4 • 774 AFY from the Seaside Basin;
- 5
- 6 • 1,300 AFY from Aquifer Storage and Recovery;
- 7
- 8 • 94 AFY from the Sand City Desalination Plant;
- 9
- 10 • 406 AFY in other available supplies.

11 12. The water supply reported in Table 1 assumes that Cal-Am will only take 774 AFY from  
12 the Seaside Basin after a new long-term permanent water supply becomes available, even though Cal-  
13 Am has the right to take 1,474 AFY. (Id.) The Report explains that Cal-Am plans to temporarily take  
14 only 774 AFY in order to commence repayment via in lieu recharge of an accumulated deficit from its  
15 prior over-pumping in the Seaside Basin. Cal-Am's agreement with the Seaside Basin Watermaster, as  
16 amended in 2014, does not require it to begin its 25-year repayment period until the October 1st that  
17 follows the time when all of the MPWSP components have been completed and are in service.

18 [Amendment No. 1 to the Memorandum of Understanding Between Seaside Basin Watermaster and  
19 California American Water Dated December 2, 2008 , p. 2 [§2], executed by Cal-Am in June of 2014.]

20 13. Assuming that a 6,252 AFY desalination facility becomes available when currently  
21 projected, the available water supply would increase to 15,702 AFY in early 2022 when the desalination  
22 project is currently planned to be on-line. (Id.)

23 14. If the desalination facility is not available, but a planned 2,250 AFY expansion of the  
24 Pure Water Monterey recycled water project is available instead, the total water supply in January 2022  
25 would increase to 11,700 AFY. (Id.) The Pure Water Monterey Expansion project is based on the  
26 existing Pure Water Monterey project, is under environmental review, has contractual rights to its source  
27 waters, and could deliver water by January 2022. (Id., p. 2.)

28 15. The MPWMD 2019 Supply and Demand Report recapitulates the history of demand  
projections used to evaluate the need for, and sizing of, the desalination portion of the MPWSP. The

1 Report demonstrates that water demand from the Cal-Am service area has declined substantially over  
2 the past 20 years.

3 16. Cal-Am initially proposed the MPWSP in April 2012 as a replacement water supply  
4 project for its current customer demand. (2019 Supply and Demand Report, p. 4.) At the time of the  
5 April 2012 application the 5-year average demand from 2007 to 2011 was 13,290 AFY. (Id.) In 2016,  
6 Cal-Am reported that the most recent 5-year average had declined to only 10,966 AFY. Despite the  
7 decline in average demand, Cal-Am continued to propose the same size facility, purportedly justified by  
8 determining existing demand based on a longer 10-year period and on adding projected future demand  
9 from existing lots of record, a recovery of the tourist industry, and demand from Pebble Beach  
10 development. (Id.) Thus, in sizing the desalination facility, Cal-Am assumed that total water demand  
11 would be 15,296 AFY, a figure that included 13,290 AFY for existing customer demand plus another  
12 2,006 AFY for future demand for lots of record, tourism recovery, and Pebble Beach development. (Id.,  
13 p. 3.) As set out in the Report and summarized below, Cal-Am's demand assumptions are substantially  
14 in excess of current or foreseeable water demand.

15 17. The MPWMD 2019 Supply and Demand Report states that average demand over the  
16 most recent 5-year period has continued to decline and is now only 10,109 AFY. (Id., p. 6, Table 3.)  
17 The Report identifies several factors that will ensure that per-capita demand does not increase in the  
18 future, including increased water costs and new legislation mandating water conservation. (Id, pp. 13-  
19 15.)

20 18. The MPWMD 2019 Supply and Demand Report also demonstrates that the 2,006 AFY  
21 estimate Cal-Am used for future demand increases for existing lots of record, a recovery of the tourist  
22 industry, and demand from Pebble Beach development were overstated and are actually in the range of  
23 1,067 AFY to 1,424 AFY. (Id., pp. 7-10.)

24 19. Critically, the MPWMD 2019 Supply and Demand Report demonstrates that the actual  
25 rate of increase in demand from year to year over the past 20 years has been only 12.7 AFY. (Id., p. 11.)  
26 Thus, regardless of the estimate of eventual total future growth in demand for lots of record, tourism  
27 recovery, and Pebble Beach development, it is clear that in the next 20 to 30 years, demand will not be  
28

1 appreciably larger than the current demand from existing customers. Thus, the Report concludes that  
2 there would be adequate water supply for over 30 years even without the 6,252 AFY desalination  
3 facility but with the planned 2,250 AFY Pure Water Monterey Expansion instead. (Id, p. 12.) The  
4 Report also concludes that even if demand increases at three times the historic rate, water supplies  
5 would be sufficient until 2043 with the planned 2,250 AFY Pure Water Monterey Expansion. (Id.)

6 20. In sum, even if the Court stays the desalination facility approvals or enjoins  
7 commencement of the desalination facility construction, water supplies for the Cal-Am service area  
8 would remain sufficient to meet existing and foreseeable future demand because the planned Pure Water  
9 Monterey Expansion would ensure that a total water supply of 11,700 AFY is available in January 2022.

10 21. Furthermore, even if the planned Pure Water Monterey Expansion were delayed past  
11 January 2022, Cal-Am would still be able to meet existing water demand without the desalination  
12 facility. First, the CDO provides that the cutbacks of Carmel River pumping will not be enforced if the  
13 desalination facility is delayed for reasons beyond Cal-Am's control.

14 22. Second, as noted above, Cal-Am is entitled to pump 1,474 AFY from the Seaside Basin,  
15 not just the 774 AFY included in the Report's Table 1 as the Seaside Basin supply figure. (Id., pp. 1-2.)  
16 Since not all of the MPWSP components will not have been completed and in service, Cal-Am could  
17 defer its planned repayment of 700 AFY to the Seaside Basin and exercise its right to pump 1,474 AFY  
18 from the Seaside Basin. Thus, even without the Pure Water Monterey Expansion or the desalination  
19 facility, Cal-Am could increase the available supply by 700 AFY, from 9,450 AFY to 10,150 AFY,  
20 which is in excess of the most recent five-year average demand of 10,109, and which would provide a  
21 cushion for several years of demand growth.

22 23. Accordingly, for all of the foregoing reasons, a stay of approvals or an injunction to bar  
23 commencement of construction would not be against the public interest or cause harm to the public  
24 because it would not result in an inability to meet foreseeable water demand or in pumping from the  
25 Carmel River in excess of the CDO limitations.

26 24. In addition, a stay of approvals or an injunction to bar commencement of construction  
27 would serve the public interest and avoid harm. First, the water cost from the Pure Water Monterey  
28

1 project and the Pure Water Monterey Expansion would be \$2,077 per acre-foot, compared to a cost of  
2 \$6,094 per acre-foot for desalination water. (Id., pp. 13-14.) Second, the record before the CPUC and  
3 the County of Monterey demonstrates that the desalination facility will cause significant and  
4 unavoidable impacts to air quality, climate change, and traffic. By contrast, the record demonstrates that  
5 the environmental impacts and energy requirements for the alternative Pure Water Monterey expansion  
6 would be substantially less.

7 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
8 true and correct based on my personal knowledge and information.

9 Executed this 26<sup>th</sup> day of September, 2019, at Carmel Valley, California.

10  
11 

12  
13 Michael D. DeLapa  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28